



N A R U C  
National Association of Regulatory Utility Commissioners

**NOTICE VIA ELECTRONIC FILING**

*December 8, 2015*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

**RE: Notice of Oral Ex Parte filed in the proceedings captioned: *In the Matter of Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, WC Docket No. 14-192.***

Secretary Dortch:

Earlier today, the undersigned, spoke by phone with **Matthew S. DelNero, Chief, Wireline Competition Bureau**. During that conversation, the undersigned asked a series of questions about the probable impact of the Federal Communications Commission's (FCC) proposed forbearance order in this proceeding on State authority vis-à-vis State Performance Assurance Plans (PAPs), and ultimately suggested the following:

In the *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next- Generation Networks*, at page 16, (available online at: <http://apps.fcc.gov/ecfs/document/view?id=60000978918>), petitioner USTelecom characterizes State Performance Assurance Plans (PAP) as “a costly burden unnecessary in today’s marketplace.”

USTA does not seek preemption of (or forbearance from) State performance plans. However, it does suggest the FCC “send a strong signal that PAPs are no longer needed”, presumably to the States that imposed them. Again, on page 25 of their petition, (available online at: <http://apps.fcc.gov/ecfs/document/view?id=60000978919>), USTelecom suggests that the FCC in granting forbearance “from the federal impetus for the PAPs will signal that it is also time for them to fade into history.”

Although § 160(e) prohibits a State from continuing to apply or enforce any provision of the Act from which the Commission has determined to forbear, it does not prevent enforcement under other legal authority.

Forbearing from the § 271 checklist, for example, does not preclude a State from maintaining any performance measurements, any associated remedies, or enforcement mechanisms that exist under or are related to compliance with any other federal or State statute or regulation. On its face, the proposed decision, as described in the trade press, could have no impact on State PAPs to the extent that they assure compliance and performance of obligations related to § 251, from which the Commission has not forbore, or other provisions of State law.

Even though the USTelecom does not explicitly seek preemption in its forbearance petition, history suggests this will not prevent some from arguing that States cannot continue to enforce their PAPs because of § 160(e)'s prohibition. It is also clear the pleading anticipates that carriers will file before State commissions to argue that specific State PAPs should “fade into history.”

Although NARUC has not take a specific position on preemption of State PAPs, it is clear, the continued viability of State PAPs, or any other specific provisions, are questions best left to the individual and directly affected State commission.<sup>1</sup>

*Whether or not the FCC agrees with NARUC's position on the impact of forbearance on a State's ability to continue to enforce part or all of that State's PAP, it should be explicit in any final order what its view is. There is no reason to foment wasteful litigation across the country at taxpayer/ratepayer expense about the impact of the FCC's forbearance on a State's ability to enforce its PAP.*

NARUC respectfully requests the FCC specify the non-applicability of § 160(e)'s to State PAPs in this order. Generically, PAPs enforce § 251 obligations as well as independent State regulatory requirements. In such cases, the State, if it determines it is in the public interest, ought to continue to be able to enforce the PAPs under other non-forborne (and independent State) legal authority.

*I believe I also, during the course of the conversation, generally complemented Mr. DelNero and the Bureau Staff on the proposed order overall as it had been described in the trade press. I have attempted to cover all the key advocacy points raised during the meeting. I am copying Mr. DelNero with this notice. If he indicates I have inadvertently left out some advocacy, I will immediately refile a corrected notice that includes the omitted discussions. If you have questions about this or any other NARUC advocacy, please do not hesitate to contact me at 202.898.2207 (w), 202.257.0568(c) or at jramsay@naruc.org.*

Respectfully Submitted,

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cc: *Rebekah Goodheart, Wireline Legal Advisor to FCC Commissioner Clyburn  
 Matthew S. DelNero, Chief, Wireline Competition Bureau*

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<sup>1</sup> NARUC has in prior pleadings and presentations discussed the limited scope of 47 U.S.C. § 160(e)'s impact on State authority.